Supreme Court, U.S.
FILED
APR 24 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 111 Original

IN THE

Supreme Court of the United States

October Term, 1987

STATE OF DELAWARE,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

STATE OF TEXAS,

Intervenor Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

ANSWER OF PLAINTIFF, THE STATE OF DELAWARE, TO THE COMPLAINT IN INTERVENTION OF THE STATE OF TEXAS

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April 24, 1989

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ANSWER OF PLAINTIFF, THE STATE OF DELAWARE, TO THE COMPLAINT IN INTERVENTION OF THE STATE OF TEXAS

Plaintiff, The State of Delaware ("Delaware"), answers the Complaint in Intervention of The State of Texas ("Texas"), as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Delaware is without knowledge or information suffi-

cient at present to form a belief as to the truth of the averments of paragraph 4.

5. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 5, except admitted that, as originally filed by Delaware, this action sought to resolve the conflicting claims of The State of New York ("New York") and Delaware with respect to the Escheatable Property of Unknowns, as defined in paragraphs 8 and 9 of Delaware's Complaint (hereinafter "Escheatable Property of Unknowns"), and that New York's current practice is to claim Escheatable Property of Unknowns after the applicable dormancy period.

6. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 6.

7. Denied.

8. Denied.

9. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 9.

10. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 10, except that denied, if it is alleged that Chapter 72 of the Texas Property Code provides for any taking of the Escheatable Property of Unknowns.

11. through 19. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraphs 11 through 19. Further, Delaware alleges that such averments insofar as they are directed to Delaware are unnecessary and immaterial.

20. Delaware admits and alleges that Delaware's claim is supported by the rulings of this Court in *Texas v. New Jersey* and *Pennsylvania v. New York*, and respectfully refers the Court to the opinions in such cases for a full statement of the rulings. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments as to New York.

21. Delaware incorporates by reference herein its Com-

plaint in this action and respectfully refers the Court thereto for a complete statement of Delaware's claim, and admits and alleges that Escheatable Property of Unknowns should be remitted to Delaware as the state of incorporation of the Delaware Brokerage Corporations which hold, or have held, such funds.

22. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 22, except denied that New York is entitled to claim any portion of the Escheatable Property of Unknowns.

23. Denied, except Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments as to New York.

24. Denied, except that the averments of the first two sentences of paragraph 24 are admitted.

25. through 38. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraphs 25 through 38, except admitted that there are no records of ownership as to the Escheatable Property of Unknowns, and that it is neither cost effective nor feasible to maintain or reconstruct such records. Further, Delaware alleges that the averments of paragraphs 25 through 38 insofar as they are directed to Delaware are unnecessary and immaterial.

39. Denied, except admitted that neither DTC nor any Delaware Brokerage Corporation has claimed any legal ownership interest to the Escheatable Property of Unknowns.

40. Denied.

41. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 41, except admitted that Delaware has identified in its complaint fifteen Delaware Brokerage Corporations, including Dean Witter Reynolds, Inc., from which New York has either wrongfully taken or demanded the Escheatable Property of Unknowns at issue herein, that Texas claims the right to take possession of any portion of such Escheatable Property of Unknowns which is attributable to

Issuers incorporated in Texas, and denied, if it is alleged that Texas is entitled to any portion of the Escheatable Property of Unknowns.

42. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 42, except denied, if it is alleged that Texas is entitled to any portion of the Escheatable Property of Unknowns.

43. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 43, except denied, if it is alleged that Texas is entitled to any portion of the Additional Excess Receipts.

44. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 44.

45. through 50. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraphs 45 through 50. Further, Delaware alleges that such averments insofar as they are directed to Delaware are unnecessary and immaterial.

51. and 52. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraphs 51 and 52.

53. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 53, except denied, if it is alleged that Texas is entitled to any portion of the Escheatable Property of Unknowns.

54. Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 54.

55. Denied, except Delaware admits the averments of the second sentence of paragraph 55 and alleges that the averments of paragraph 55 insofar as they are directed to Delaware are redundant or immaterial.

56. Denied, except Delaware admits the averments of the second sentence of paragraph 56 and that in accordance with

Delaware's claim all Escheatable Property of Unknowns held by DTC Participants would go to Delaware, and except that Delaware is without knowledge or information sufficient at present to form a belief as to the truth of the averments of paragraph 56 as to New York. Further, Delaware alleges that the averments of paragraph 56 insofar as they are directed to Delaware are redundant or immaterial.

57. Delaware admits the averments of the first sentence of paragraph 57, denies the averments of the following two sentences of paragraph 57, and is without knowledge or information sufficient at present to form a belief as to the truth of the remaining averments in paragraph 57.

58. Denied.

59. Denied, except Delaware admits the averments of the second sentence of paragraph 59, and is without knowledge or information sufficient at present to form a belief as to the truth of the averments as to New York.

Defenses

1. Texas' claim in intervention should be dismissed for failure to state a claim under the prior controlling decisions of this Court.

2. Texas is estopped from asserting its claim in intervention by reason of its prior positions before this Court.

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PROOF OF SERVICE

I, RICHARD L. SUTTON, certify that I am counsel of record for plaintiff, the State of Delaware, that I am a member of the Bar of the Supreme Court of the United States, and that on the 24th day of April, 1989, I served copies of the foregoing Answer Of Plaintiff, The State Of Delaware, To The Complaint In Intervention Of The State Of Texas, on all parties required to be served by depositing such copies, first-class postage prepaid, in a United States Post Office, addressed as follows:

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